

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and NEW SAN FRANCISCO BAIT DISTRIBUTORS. (hereinafter "S.F. BAIT DISTRIBUTORS"), located at 1401 Davidson Ave, San Francisco, California 94124.

I. RECITALS

- (1) Health and Safety Code, Section 39650-39675 mandates the reduction of the emissions of substances that have been determined to be toxic air contaminants (TACs). In 1998, following an exhaustive 10-year scientific assessment process, the Air Resources Board identified particulate matter (PM) from diesel-fueled engines as a toxic air contaminant. Transport Refrigeration Units (TRUs) are powered by diesel fueled engines that emit toxic particulate matter. TRUs are controlled under section 2477.
- (2) CCR, Title 13, section 2477 (e) (1) (A) (1) states: No owner/operator shall operate a TRU or TRU generator (gen) set in California unless it meets the in-use emission category performance standard.
- (3) The ARB Enforcement Division has documented that S.F. BAIT DISTRIBUTORS, failed to bring their fleet of TRUs in compliance with the in-use performance standard.
- (4) California Health and Safety Code (H&SC) Section 44011.6 established the Heavy Duty Vehicle Inspection Program (HDVIP). It authorizes ARB to inspect on-road heavy-duty vehicles for excessive smoke emissions and engine tampering and to issue citations, accordingly. The program also requires the vehicle owner to repair its engines that exceed the prescribed ARB smoke opacity standards, perform a post-repair opacity test, and submit proof of repairs and any assessed penalties under the Regulations of the Heavy-Duty Smoke Inspection Program, Chapter 3.5, Sections 2180-2188, Title 13 CCR.
- (5) H&SC Section 43701 provides that ARB shall adopt regulations that require owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excess smoke emissions.
- (6) Title 13, CCR sections 2190 et seq. were adopted under the authority of H&SC section 43701 and, with limited exceptions which are not applicable here, apply to all heavy-duty diesel powered vehicles with gross vehicle weight ratings greater than 6,000 pounds which operate on the streets or highways within the State of California.

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- (7) Title 13, CCR sections 2190 et seq. authorize the Periodic Smoke Inspection Program (PSIP) which requires the owners and operators of California based vehicle fleets of two or more heavy duty diesel motor vehicles with gross vehicle weight ratings greater than 6,000 pounds that operate on the streets or highways within the State of California to conduct annual smoke opacity inspections of their vehicles that are four years older than the model year of the vehicle's engine.
- (8) Title 13, CCR section 2192 (a) requires inter alia that the owner of the vehicle "[t]est the vehicle for excessive smoke emissions periodically according to the inspection intervals specified in section 2193 (a), (b), and (c)", "[m]easure the smoke emissions for each test...", "[r]ecord the smoke test opacity levels and other required test information as specified in section 2194..." and "[k]eep the records specified in section 2194 for two years after the date of inspection."
- (9) The ARB considers testing, measuring, recording, and recordkeeping to be critical components in reducing excessive smoke emissions from these heavy-duty vehicles.
- (10) ARB contends S.F. BAIT DISTRIBUTORS failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for 2009 and 2010 in violation of Title 13, CCR Sections 2190 et seq.
- (11) H&SC Section 43016 states, "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty of not to exceed five hundred dollars (\$500.00) per vehicle."
- (12) ARB contends that if the facts described in recital paragraphs (1) – (11) were proven civil penalties could be imposed against S.F. BAIT DISTRIBUTORS, as provided in H&SC sections 39674.
- (13) S.F. BAIT DISTRIBUTORS is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with ARB. ARB accepts this Agreement in termination of this matter. Accordingly, the parties agree to resolve this matter completely by means of this Agreement, without the need for formal litigation, and therefore agree as follows:

II. TERMS & RELEASE

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In consideration of the ARB not filing a legal action against S.F. BAIT DISTRIBUTORS for the violations referred to above, the ARB and S.F. BAIT DISTRIBUTORS agree as follows:

- (1) Upon execution of this Agreement, S.F. BAIT DISTRIBUTORS shall pay a civil penalty of four thousand eight hundred and seventy-five dollars (\$5,875.00). Payment shall be made in check form as described below in the payment schedule as agreed to during our phone conference on February 4, 2013.

First Payment	Upon execution of this agreement
Second Payment	April 1, 2013
Third Payment	May 1, 2013
Fourth Payment	June 1, 2013
Fifth Payment	July 1, 2013
Final Payment	August 1, 2013

Payments not received by the fifth (5th) day of the month following due date shall be considered delinquent. If payment is not received by the fifth (5th) day of the month following the due date, ARB shall notify S.F. BAIT DISTRIBUTORS. S.F. BAIT DISTRIBUTORS will then have five (5) days to cure the delinquency.

The initial two (2) monthly installments shall be made by checks or money orders in the amount of \$734.38 made payable to the "Peralta College Foundation." The last four (4) monthly installments shall be made by checks or money orders in the amount of \$1,101.56 and made payable to the "California Air Pollution Control Fund".

- All payments and documents shall be sent to the attention of:

Mr. Eric Brown, Air Pollution Specialist
Air Resources Board, Enforcement Division
P.O. Box 2815
Sacramento, CA 95812

- (2) If the Attorney General files a civil action to enforce this settlement agreement, S.F. BAIT DISTRIBUTORS shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

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- (3) S.F. BAIT DISTRIBUTORS shall not violate Health and Safety Code Sections 43701 et seq. and 44011.6 et seq., Title 13, CCR, Sections 2180 et seq., 2190 et seq., and 2485 et seq.
- (4) S.F. BAIT DISTRIBUTORS shall comply with one or both of the following options to attend the California Council on Diesel Education and Technology (CCDET I) class, (SAE J1667 Snap Acceleration Smoke Test Procedure for Heavy-Duty Diesel Powered Vehicles) as described on the ARB webpage at <http://www.arb.ca.gov/enf/hdvp/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on compliance with the PSIP, ECL and the HDVIP.
 - (a) S.F. BAIT DISTRIBUTORS shall have the fleet maintenance manager (or equivalent) and all staff performing opacity tests for compliance with PSIP and the HDVIP attend the CCDET I class. Proof of CCDET I completion shall be provided to ARB within six months of the date of this Agreement and be maintained in each applicable employee's file for the term of his or her employment.
 - (b) If S.F. BAIT DISTRIBUTORS uses a contractor to perform the annual smoke opacity testing required under the PSIP, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET I course, BHANDAL BROTHERS shall obtain proof that the contractor's staff conducting the smoke opacity tests completed the CCDET I course within the past four years. This proof of CCDET I completion shall be provided to ARB with PSIP records as required by this Agreement and be maintained with the annual PSIP records.
- (5) S.F. BAIT DISTRIBUTORS shall comply with one or both of the following options to attend the CCDET II class (Diesel Exhaust After Treatment and Maintenance), described on ARB's webpage <http://www.arb.ca.gov/enf/hdvp/ccdet/ccdet.htm>. This class is conducted by various California Community Colleges and instructs attendees on California's emission regulations and the proper care and maintenance of exhaust after treatment systems (EATS).
 - (a) S.F. BAIT DISTRIBUTORS shall have the fleet maintenance manager (or equivalent) and all staff responsible for maintenance of EATS attend the CCDET II class. Proof of CCDET II completion shall be provided to ARB within six months of the date of this Agreement and also be maintained in each applicable employee's file for the term of his or her employment.

- (b) In case S.F. BAIT DISTRIBUTORS uses a contractor for the maintenance of EATS, in addition to having the fleet maintenance manager (or equivalent) attend the CCDET II course, S.F. BAIT DISTRIBUTORS shall obtain proof that the contractor's staff maintaining the EATS device(s) completed the CCDET II course within the last four years. This proof of the CCDET II completion shall be provided by S.F. BAIT DISTRIBUTORS to the ARB within six months of the date of this settlement and be maintained with the EATS installation and maintenance records.
- (6) S.F. BAIT DISTRIBUTORS shall provide copies of all PSIP compliance records for calendar years 2013 and 2014 to ARB by January 31 of the following year. Copies shall be addressed to the attention of Mr. Eric Brown, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812. The ARB reserves the right to visit any S.F. BAIT DISTRIBUTORS fleet location at any time during business hours to conduct compliance audits for the TRU, HDVIP, PSIP, or any other applicable ARB program.
- (7) S.F. BAIT DISTRIBUTORS shall complete Low NOx Software Upgrades (reflash) on all applicable heavy duty diesel engines operating in California and report back to the ARB, within 45 days of this Agreement.
- (8) Each 1974 or newer diesel powered heavy-duty commercial vehicle in the S.F. BAIT DISTRIBUTORS fleet shall comply with the emission control label (ECL) requirement set forth in the CCR, Title 13, Section 2183 (c) and report back to ARB, within 45 days of the execution of this agreement.
- (9) S.F. BAIT DISTRIBUTORS shall instruct all employees who operate diesel fueled commercial vehicles to comply with the commercial vehicle idling regulations set forth in CCR, Title 13, Section 2485, within 45 days of the execution of this agreement.
- (10) Within 45 days of the execution of this Agreement, S.F. BAIT DISTRIBUTORS shall bring its fleet of TRUs operating in California in compliance with the applicable in-use emission standards as required by Title 13, CCR, section 2477 (e) (1) (A) (1), apply for an ARB IDN for each of the California-based TRUs or TRU gen sets that it owns and/or operates as required by Title 13, CCR, section 2477 (e) (1) (E) (1), and affix the IDN to both sides of each TRU or TRU gen set within 30 days of receiving the number from ARB as required by Title 13, CCR section 2477 (e) (E) (1) (f). S.F. BAIT DISTRIBUTORS shall submit the proof of registration in the Air Resources Board Equipment Registration (ARBER) system to Mr. Eric Brown, Air Pollution Specialist, ARB Enforcement Division, P.O. Box 2815, Sacramento, CA 95812.

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- (11) S.F. BAIT DISTRIBUTORS shall submit a correct TRU Operator Report in the ARBER database as required by Title 13, CCR section 2477 (f) (1) (A) within 45 days of execution of this Agreement.
- (12) S.F. BAIT DISTRIBUTORS shall review and correct all the information reported in the ARBER database within 45 days of execution of this Agreement.
- (13) S.F. BAIT DISTRIBUTORS shall not violate the TRU ATCM, as codified in CCR, Title 13 section 2477.
- (14) This Agreement constitutes the entire agreement and understanding between ARB and S.F. BAIT DISTRIBUTORS concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and S.F. BAIT DISTRIBUTORS concerning the subject matter hereof.
- (15) S.F. BAIT DISTRIBUTORS shall not violate the Truck and Bus regulation as codified in CCR, title 13, section 2025.
- (16) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (17) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (18) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (19) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (20) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This letter or includes this information, which is also summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. We consider all relevant circumstances in determining penalties, including the eight factors specified in Health and Safety Code (H&SC) sections 42403 and 43024.

TRU Violations

The per unit penalty for the TRU violations involved in this case is a maximum of \$1,000 per unit per day for strict liability violations or \$10,000 per unit per day for negligent or intentional violations pursuant to H&SC section 39674. The penalty obtained for non-compliant TRUs is \$2,250.00 for 3 non-compliant TRUs operated by S.F. BAIT DISTRIBUTORS or \$750.00 for each violation. S.F. BAIT DISTRIBUTORS received an additional citation on December 18, 2012 for \$1,000.00. That citation has been incorporated into the settlement.

PSIP Violations

The per vehicle penalty for the PSIP violations involved in this case is a maximum of \$500 per vehicle per year. The penalty obtained for the PSIP violations involved in this case is \$2,625.00 for 7 violations over two years or \$375.00 per violation.

The foregoing penalties were reduced because these were innocent, first time violations, the violator showed financial hardship and cooperated with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

TRU Violations

The penalty provision being applied for the Air Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Unit and TRU Generator Set (Title 13, CCR, section 2477 et seq.) violations (including registration and labeling) is H&SC section 39674 because the TRU rule is an Air Toxic Control Measure adopted pursuant to authority contained in H&SC section 39650-39675. S.F. BAIT DISTRIBUTORS, as an owner of TRUs, failed to bring 3 TRUs in their fleet into compliance with the in-use emissions standards.

PSIP Violations

The penalty provision being applied to the PSIP violations is Health and Safety Code section 43016 because S.F. BAIT DISTRIBUTORS failed to test, measure, record, and maintain records of smoke emissions from its fleet of heavy duty diesel vehicles for years 2010, and 2011 in violation of the PSIP regulation in Title 13, CCR Sections 2190 et seq, for 7 violations. Since the PSIP regulation was adopted pursuant to authority granted in Part 5 of Division 26 of the Health and Safety Code and since there is no specific penalty or fine provided for PSIP violations in Part 5, Health and Safety Code section 43016 is the applicable penalty provision.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

TRU Violations

The provisions cited above do prohibit emissions above a specified level of g/hp-hr. However, since the hours of operation of the non-compliant TRUs involved and their individual emission rates are not known, it is not practicable to do so.

PSIP Violations

The provisions cited above do prohibit emissions above a specified percentage of smoke opacity. However, since the hours of operation of the non-compliant vehicles involved and their individual emission rate are not known, it is not practicable to quantify the excess emissions.

- (21) S.F. BAIT DISTRIBUTORS acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at HSC sections 42403 and 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant units involved and their individual emission rates are not known, it is not practicable for ARB to quantify the excess emissions.
- (22) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining

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swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.

- (23) The penalty was based on confidential settlement communications between ARB and S.F. BAIT DISTRIBUTORS that ARB does not retain in the ordinary course of business either. The penalty is the product of an arm's length negotiation between ARB and S.F. BAIT DISTRIBUTORS and reflects ARB's assessment of the relative strength of its case S.F. BAIT DISTRIBUTORS the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that S.F. BAIT DISTRIBUTORS may have secured from its actions.
- (24) Now therefore, in consideration of the payment by S.F. BAIT DISTRIBUTORS, in the amount of five thousand eight hundred seventy-five dollars (\$5,875.00), ARB hereby releases S.F. BAIT DISTRIBUTORS and its principals, officers, agents, predecessors and successors from any and all claims that ARB may have based on the facts and allegations described in recital paragraphs (1) – (11) above. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James R. Ryden

Title: Chief, Enforcement Division

Date: 4/8/13

NEW SAN FRANCISCO BAIT DISTRIBUTORS

By: 

Name: Dan Battaglin

Title: VP

Date: 3/25/13